

Beland-PLM



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Yellow Freight System, Inc.

File: B-223311

Date: August 3, 1987

## DIGEST

A Navy supplier described plastic containers on a Government Bill of Lading (GBL) under a general National Motor Freight Classification (NMFC) item as plastic articles, NOI, density of 6 but less than 12 pounds per cubic foot. The description required application of a class 100 rating and rate. The carrier collected freight charges on a specific NMFC description, air cargo containers, set up, which required application of a class 400 rating and rate. The producer's description is a factor weighing heavily in the determination of an article's description, and the carrier has not rebutted the prima facie validity of the GBL description. Therefore, GSA's deduction of the difference between charges collected and charges derived from the classification description and item shown on the GBL is sustained.

## DECISION

Yellow Freight System, Inc. (Yellow) requests review of a deduction action taken by the General Services Administration (GSA) relating to a transportation bill. GSA determined that Yellow collected overcharges on the bill and, in the absence of refund, the overcharges were deducted from other monies due the carrier. We conclude that Yellow has not shown that GSA's action was improper.

## BACKGROUND

The bill in issue relates to a shipment that Yellow transported for the United States Navy from Tonawanda, New York, to Burbank, California, in July 1983. The issue of charges arises from a dispute over the description and correct classification rating of the commodity shipped. The Government Bill of Lading (GBL), No. R-0544179, describes the shipment of 34 cartons, weighing 2,890 pounds, as:

"PLASTIC ARTICLES, NOI O/T EXPANDED  
(NMFC 156600 SUB 6)

DECLARED DENSITY IS 6 LBS PER CUBIC FOOT

039651

DIMS: 80 x 20 x 16

CUBE: 503.7

TENDERED AS AN LTL SHIPMENT"1/

Yellow originally billed and collected charges based on the class 100 LTL rating applicable to plastic articles O/T expanded having a density of 6 but less than 12 pounds per cubic foot in Item 156600 Sub 6 of NMFC 100-J. The class 100 rate from Rocky Mountain Motor Tariff Bureau Tariff No. ICC 521-C produced charges of \$727.53. GSA eventually adopted this as its audit basis.

In September 1983, Yellow presented a supplemental bill for \$4,217.63 of additional charges based on its Weight and Inspection Certificate purporting to show that the article shipped should have been classified as "airline cargo containers, set up." The higher charges were based on a class 400 any quantity rating on that article, as described in Item 41015 Sub. 1 of NMFC 100-J. The carrier was paid the supplemental amount. GSA issued an overcharge for the \$4,217.63 based on the GBL record, and after a series of correspondence which culminated in the carrier's refusal to refund that amount, GSA made the deduction.

The manufacturer, Lockheed Missiles and Space Company, Inc. (Lockheed), informed GSA that while the article is in a general sense a container it is not a shipping container, which may hold any number of smaller containers as contemplated by Item 41015, and it is not limited for use in air transportation. Lockheed described the article as follows:

"The container is constructed of rigid plastic with metal hinges, metal closures and a pressure relief valve. The entire interior is filled with a very dense polyurethane foam and some aluminum sheets, used to securely hold the device that is actually shipped within the container.

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1/ The meaning of the relevant abbreviations is as follows: "NOI" - not otherwise indexed; "O/T" - other than; "NMFC" - National Motor Freight Classification; "156600 Sub 6" - the specific item in the NMFC where the article's description can be found; "DIMS" - the dimensions of each carton in inches; "LTL" - less truckload.

It is designed to hold one part, specifically a Trident I Second Stage Conduit Cover. The void available to house the part is less than 10 percent of the total volume of the container. Outside dimensions are 80" x 20" x 16", 14.81 cubic feet, weighing 85 pounds each."

Thus, the feature that distinguishes the article from a general shipping container is the fact that over 90 percent of its volume is already displaced by polyurethane foam and aluminum covered by an exterior of rigid plastic, leaving less than 10 percent for storage of a specific item, a Trident I Second Stage Conduit Cover. In the absence of a specific description for the article in the NMFC, Lockheed described the article on the GBL as a plastic article at a declared density of 6 pounds per cubic foot under Item 156600 Sub 6 to account for its plastic exterior and density. Yellow insists it is an airline cargo container.

#### DISCUSSION

Carriers have the burden to prove the correctness of their freight charges when overcharges are administratively determined by GSA. Yellow Freight System, Inc., B-192872, May 7, 1979. A bill of lading description of a commodity is entitled to a rebuttable presumption of correctness. See Trans Country Van Lines, Inc., 53 Comp. Gen. 868 (1974). The producer's description is a factor weighing heavily in the determination of an article's classification description. See Navajo Freight Lines, Inc., 57 Comp. Gen. 649 (1978). The NMFC is a tariff which is interpreted by its plain terms, but if doubt exists the doubt is resolved in favor of the shipper. B-177223, January 10, 1974. We conclude that Yellow has not rebutted the prima facie correctness of the GBL description and has not carried its burden of proof of the correctness of its charges.

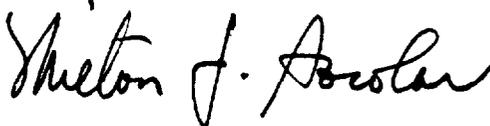
Although the GBL description, plastic articles, NOI, identifying the article shipped to Item 156600 Sub 6 of the NMFC, does not specifically describe the commodity, we believe it is entitled to prima facie validity since the article has a plastic exterior, approximates the Sub 6 density of 6 pounds per cubic foot, and the supplier, Lockheed, represents the container was not designed solely for air transportation.

Yellow failed to rebut the prima facie validity of the GBL description with its own description, air cargo container,

in Item 41015 Sub 1. The article was not designed exclusively for air transportation and it does not appear to be exclusively a "shipping" container within the meaning of Item 41015 because its interior space is substantially consumed by dunnage to cradle a specific part.

In the absence of rebuttal by the carrier of the prima facie validity of the GBL description or any evidence in the record that compels a contrary result, we hold that GSA's deduction action has not been shown to be improper.

Accordingly, we sustain GSA's action.

*for*   
Comptroller General  
of the United States